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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,480	10/08/2003	Todd M. Bjork	M81.12-0065	7467

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EXAMINER

RAMANA, ANURADHA

ART UNIT PAPER NUMBER

3733

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary

Application No.

10/681,480

Applicant(s)

BJORK ET AL.

Examiner

Anu Ramana

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/8/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-2, 4-5, 7-13, 15-20 and 22-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 5 and 7 is/are allowed.
- 6) ☒ Claim(s) 8, 9, 16-20 and 23-31 is/are rejected.
- 7) ☒ Claim(s) 2, 4, 10-13, 15 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 2 and 4 are objected to because of the following informalities.

In claim 2, line 4: "engage" should be "engages" to correct a minor typographical error.

In claim 4, line 2: "surfaces" should be "surface" to correct a minor typographical error.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Day (US 4,545,572).

Day discloses a surgical apparatus or "first clamping member" 11 having first and second legs (40, 41) moveable between clamping and non-clamping positions and a pawl 36 pivotally coupled to an external surface of the first clamping member wherein an end of the pawl cooperates with grooves on a support member 25 (Figs. 2-3, col. 2, lines 28-68 and col. 3, lines 1-47).

Claims 16-19 and 23-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Winqvist et al. (US 6,613,049).

Winqvist et al. disclose a clamping assembly (60 or 90) including first and second clamping members (64 or 90) with clamping bores or sockets and friction means or "a plurality of raised portions" in the bore to retain a rod (31 or 61) in a set position, a shaft 70 and an actuating mechanism 76 (Figs. 9 and 12, col. 9, lines 19-28, col. 10, lines 23-67 and col. 11, lines 1-58).

Regarding claim 27, Winqvist et al. disclose a stop or "pin" 97 between the first and second legs (col. 11, lines 38-58).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips (US 6,736,775) in view of Roussouly et al. (US 5,810,817).

Phillips discloses a clamping assembly or surgical joint 10 including a first clamping member 45 with a bore 58, a second clamping member with a socket 106, a shaft 19 and an actuating mechanism 15 wherein the second clamping member has a clamping arm 100 pivotally attached to main body 90 (Fig. 2, col. 2, lines 45-67, col. 3, lines 1-67 and col. 4, lines 1-39).

Phillips discloses all elements of the claimed invention except for a plurality of raised portions extending into the clamping bore.

Roussouly et al. teach providing non-slip projections such as radial ribs 27 on the bearing surfaces of a clamping part opposing rotation of the clamping part around a fastening rod (Figs. 7, 10, 13 and 16, col. 2, lines 52-65 and col. 5, lines 63-67).

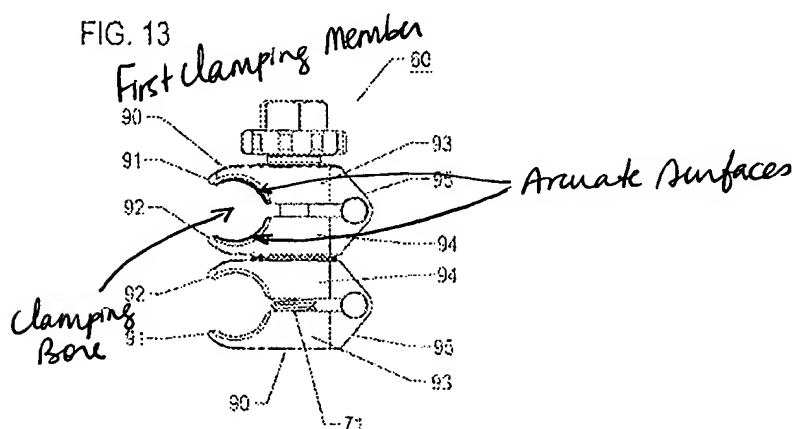
Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided non-slip projections, taught by Roussouly et al., on the gripping or bearing surfaces (58, 61 and 106) of the Phillips clamping members to prevent rotation of rods held by the jaws of the clamping members.

Response to Arguments

Applicants' arguments submitted under "REMARKS" in the response filed on September 8, 2005 have been fully considered.

Applicants' arguments with respect to claims 8 and 9 have been considered but are moot in view of the new ground of rejection.

Applicants' arguments regarding claims 16 and 23 are not directed to claimed features. Winquist et al. discloses a first clamping member 90 having first and second legs 91, 92 and a plurality of raised portions attached to the clamping member wherein the plurality of raised portions create arcuate surfaces extending into the clamping bore (see marked up Fig. 13 from Winquist et al. below). The Examiner notes that Applicants are not claiming that each of the raised portions has an arcuate surface.



Applicants' arguments regarding the rejection of claims 16-20 as being obvious over the combination of Phillips and Roussouly et al. are not persuasive since the combination of Phillips and Roussouly et al. clearly discloses a first clamping member

having first and second legs defining a clamping bore and a plurality of raised portions attached to the clamping member wherein the raised portions define an arcuate surface extending into the clamping bore. The Examiner notes that Applicants are not claiming that each of the raised portions has an arcuate surface.

Allowable Subject Matter

Claims 1, 5 and 7 are allowed.

Claims 2 and 4 would be allowable if the objections made in this office action are addressed.

Claims 10-13, 15 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-

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4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR *Anuradha Ramana*
November 26, 2005


EDUARDO C. ROBERT
PRIMARY EXAMINER